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September 6, 2012

Hand-Delivery

Pennsylvania Department of Education
ATTN: Ron Tomalis, Secretary and
Carolyn C. Dumaresq, Deputy Secretary
333 Market Street
Harrisburg, PA 17126-0333

**RE: Preliminary Declaration of Financial Recovery Status
Answer/Response of School District of the City of York**

Dear Secretary Tomalis and Deputy Secretary Dumaresq:

Our office represents the School District of the City of York. Enclosed, for filing with the Department of Education, please find the original and one copy of the School District's Answer/Response to the Preliminary Declaration issued by Deputy Secretary of the Pennsylvania Department of Education.

Very truly yours,

Jeffrey A. Gettle

Enclosure

pc: Dr. Deborah L. Wortham, Superintendent (via email only)

Margie Orr, Board President (via email only)

Mindy Wantz, Board Secretary (via email only, for distribution to board members)

**In Re: Preliminary Declaration of Financial Recovery Status
for the School District of the City of York
in the Nature of an Order to Show Cause**

**SCHOOL DISTRICT OF THE CITY OF YORK'S ANSWER TO THE
PRELIMINARY DECLARATION OF FINANCIAL RECOVERY STATUS
MADE BY THE DEPUTY SECRETARY OF EDUCATION ON BEHALF OF THE
PENNSYLVANIA DEPARTMENT OF EDUCATION**

And, now, this 5 day of September, 2012, comes the School District of the City of York by and through its attorneys, Gettle & Veltri, by Jeffrey A. Gettle, Esquire, who files this Answer to the Preliminary Declaration of Financial Recovery Status made by the Deputy Secretary of Education and states as follows:

Introductory paragraph (not numbered). Denied. After reasonable investigation the School District of the City of York (hereinafter, "District") is without knowledge or information sufficient to form a belief as to the truth of the averment regarding what the Deputy Secretary is aware or is not aware of with respect to the financial condition of the District, the administrative practices of the elected board of school directors, and other pertinent matters and, therefore, the same is denied. Strict proof is demanded.

1. Admitted (but with clarification). It is admitted that the Pennsylvania Department of Education (hereinafter, "Department") provided the District with technical assistance related to financial and budgetary matters during the 2011-12 school year. By way of clarification, the technical assistance was provided at the request of the District in or around August, 2011, because the District believed that the Department had programs or services available to

support Districts which lacked a fund balance. Specifically, at that time, a preliminary or initial audit of the District's accounts had indicated or revealed that the District's fund balance from the prior fiscal year may have been substantially overstated by approximately three million dollars which, if true, would have eliminated or substantially eliminated the District's fund balance-- a balance which was used, in part, to balance the 2011-12 fiscal year budget. As a result of the foregoing and to make sure that the District's overall accounting practices were in order, the District requested a financial review by the Department of the District's current financial status. In response, the Department provided the District with the services of a consultant who provided the District with technical assistance during the 2011-12 school year. However, the District also hired its own consultant, Mr. James Duff, who provided the District with extensive technical assistance and services relating to financial and business matters during the 2011-12 school year until the District could find a new business manager to replace the business manager who had resigned in the fall of 2011. The District hired its new business manager, Mr. Richard Snodgrass, on June 4, 2012.

2. Denied as stated. The Department is aware of the financial circumstances of the District because the District invited the Department to provide technical assistance related to financial and budgetary matters for the reasons set forth in paragraph 1 above which is incorporated herein by reference thereto. By way of further answer, however, although the District may have financial

problems, the problems are not serious or so serious that they cannot be handled and managed effectively by the District and its Board of School Directors. Moreover, meaningful and appropriate state legislation to address and fix the inequities of the funding formulas for basic education, special education, and charter schools would assist the District with its finances.

3. Denied. It is denied that the District lacks a concrete long term plan to deal with its alleged financial deficiencies. On the contrary, the District has implemented a plan and will continue to develop and implement plans and strategies to deal with its financial circumstances. For example, within the past year, the District has taken significant and unprecedented steps to deal with its budget and financial matters including, among other things, closing both of its middle schools and converting all of its elementary schools into K-8 buildings, reducing the size of its central administration and administration in general, initiating pay freezes or pay reductions for its administrators, teachers, and support staff, further reducing the number of teachers and support staff, while, at the same time, maintaining basic levels of non-mandated programs such as art, music, physical education, and athletics, in part, through the solicitation of donations from the community.
4. Admitted in part and denied in part. It is admitted that the District requested and received an advance of its basic education funding subsidy in or around April of 2012, but under the facts and circumstances as follows: While

working in partnership with the financial consultant from the Department, it was recommended to the District that the District request an advance of its basic education funding subsidy to address expected cash flow deficiencies at that time. The District followed the recommendation and requested and received the advance of its basic education funding subsidy. Certainly, if the District had known in April of 2012 that its request for an advance at that time would, pursuant to future legislation, be the basis for the Department to make a Declaration or to attempt to make a Declaration under such legislation, the District would not have requested the advance and would have pursued other options. By way of further answer, it is also denied that the advance in April of 2012, in any way, is relevant or determinative in these proceedings for the reasons set forth in paragraph 8 below which are incorporated herein by reference thereto.

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5. Denied. After reasonable investigation the District is without knowledge or information sufficient to form a belief as to the truth of the averment and, therefore, strict proof is demanded. By way of further answer, any data for average daily membership other than the present time (the time of these proceedings), including the data cited by the Deputy Secretary in the Preliminary Declaration (the alleged ADM for the 2010-11 school year), is not material, determinative, or relevant.

6. Denied. The averments are conclusions of law to which no response is required and, therefore, the same are denied. To the extent the Deputy Secretary or the Department is using or utilizing an order to show cause in order to shift or to attempt to shift the burden of proof to the District to show cause why a Declaration should not be issued, then the District objects to the procedure. The District maintains that it is the Department's burden of proof to establish that the District meets the requirements of financial recovery status under Act 141 of 2012 and that the Secretary is only entitled or authorized to issue a Declaration if the requirements under said Act have been met. By way of further answer, the Department has not and cannot meet its burden under the Preliminary Declaration for the reasons set forth in this Answer and more particularly set forth in Paragraph 8 below.

7. Denied. The averments are conclusions of law to which no response is required and, therefore, the same are denied. To the extent the Deputy Secretary or the Department is using or utilizing an order to show cause in order to shift or to attempt to shift the burden of proof to the District to show cause why a Declaration should not be issued, then the District objects to the procedure. The District maintains that it is the Department's burden of proof to establish that the District meets the requirements of financial recovery status under Act 141 of 2012 and that the Secretary is only entitled or authorized to issue a Declaration if the requirements under said Act have been met. By way of further answer, the Department has not and cannot meet its

burden under and pursuant to the Preliminary Declaration for the reasons set forth in this Answer and more particularly set forth in Paragraph 8 below.

8. Denied. The averments are conclusions of law to which no response is required and, therefore, the same are denied. To the extent the Deputy Secretary or the Department is using or utilizing an order to show cause in order to shift or to attempt to shift the burden of proof to the District to show cause why a Declaration should not be issued, then the District objects to the procedure. The District maintains that it is the Department's burden of proof to establish that the District meets the requirements of financial recovery status under Act 141 of 2012 and that the Secretary is only entitled or authorized to issue a Declaration if the requirements under said Act have been met. By way of further answer, the Department has not and cannot meet its burden under and pursuant to the Preliminary Declaration and, accordingly, the Secretary is not or should not be permitted, entitled, or otherwise authorized to execute a final declaration of financial recovery status against the District due to the facts and circumstances set forth in the paragraphs above and for the following reasons which are, or may be, asserted in the alternative:

- a. The following laws or principles of statutory construction pursuant to the Statutory Construction Act (1 Pa.C.S.A. 1501 et. seq.) prohibit the Department from retroactively applying the law or utilizing the law with

respect to the District's advance of the basic education subsidy in April of 2012, which was prior to the passage of the Act on July 12, 2012:

(1) Word and phrases. Words and phrases shall be construed according to rules of grammar and according to their common and approved usage,... 1 Pa.C.S.A. 1903.

(2) Legislative intent controls. ... (b) When the words of a statute are clear and free from all ambiguity, the letter of it shall not be disregarded under the pretext of pursuing its spirit. (c) When the words of a statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters: ... (7) the contemporary legislative history.

The language of the statute is clear and unambiguous. Specifically, Section 621-A(a)(1)(i)(A) provides, in pertinent part, the Secretary shall issue a declaration that a school district is in financial recovery status when "the school district . . . receives an advance of its basic education subsidy at any time" (emphasis added). "Receives" is present tense. If the legislature intended to encompass advances made in the past, it would have used the word "received".

Even if, assuming arguendo, that the language of the above-referenced section of the Act is not clear or unambiguous, the contemporary

legislative history of Act 141 of 2012 (HB 1307) establishes that the General Assembly did not intend the Act to apply to advances requested prior to the passage of the Act in July of 2012. Section 621-A(a)(1) of the Act was an amendment to HB 1307 which came out of the Senate Education Committee (chaired by Senator Piccola). The section derives its origin from SB 1450, which had been introduced by Sen. Piccola in March of 2012. Section 621-A(a)(1) of SB 1450 stated, in pertinent part, that the “shall issue a declaration ... upon the occurrence of ... the following circumstances within the previous three years: (1) the school district requests an advance of its basic education funding subsidy...” (emphasis added). The words “within the previous three years” were omitted from the senate amendments to HB 1307 (Act 141). Accordingly, the legislative history also confirms that a past advance of a subsidy prior to the passage of the Act was not intended to trigger a declaration.

- b. Act 141 of 2012 or the way it is being interpreted or utilized or attempted to be interpreted or utilized by the Department is unconstitutional under the federal constitution (Article 1, Section 10) and the Pennsylvania constitution (Article 1, Section 17) as an *ex post facto law*. An *ex post facto law* is defined as a law passed after the occurrence of a fact or commission of an act, which retroactively changes the legal consequences or relations of such fact or deed. In this case, the District requested an advance of its basic education subsidy (albeit at the suggestion of the

Department) which was prior to the enactment and effective date of Act 141 of 2012, the act or law which the Department is using or utilizing to make its declaration. The law changes the consequences of the advance by permitting or allowing a Declaration which, among other things, results in a loss of control by the District and its board.

- c. Article 3, section 32 of the Pennsylvania Constitution provides that the General Assembly shall pass no special law which can be provided by general law regulating the affairs of school districts. (See Pa Const., Art 3, section 32). Section 621-A(a)(1)(A) creates an unconstitutional distinction between school districts with an average daily membership of greater than 7,500 and school district with an average daily membership of 7,500 or less without a legitimate state interest or a rational basis and in complete disregard for the classifications of school districts not only set forth in the Section 2-202 of the School Code but also Act 141 itself. (See definition of "School District" in section 602-A (Definitions) of the Act).
- d. Due to the facts and circumstances of the advance in April, 2012, as set forth in paragraphs 1 and 4 above, the Secretary should exercise his discretion under Section 621-A(a)(1)(ii)(B) and decline to issue a declaration. The irregularities and issues with the District's 2011-12 budget was an isolated and unforeseen event and, thus, constitute or

equate to an emergency that caused the request for the advance in April, 2012 to be made.

WHEREFORE, based on the foregoing, it is respectfully submitted that the School District of the City of York is not and should not be in Financial Recovery Status and it is further respectfully requested that the Preliminary Declaration of Financial Recovery Status issued by the Deputy Secretary of Education for the Pennsylvania Department of Education be dismissed and, in the alternative, a hearing be scheduled and, thereafter, the Preliminary Declaration be denied.

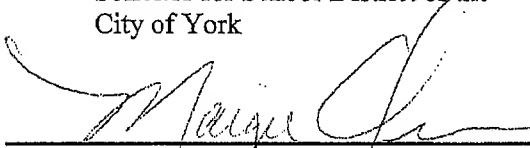
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Respectfully submitted,

GETTLE & VELTRI

By: 

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Margie Orr, President of the Board
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